IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1915 OF 2006

Nimish Thakore .. Applicant

Versus

State of Maharashtra .. Respondent

WITH

CRIMINAL APPLICATION NO.902 OF 2006

Dilip Balkrishna Sheth .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Subhash Jha i/b. Ghanshyam Upadhye forr applicant (1915 of 2006)
Mr.A.P.Mundargi, Senior Advocate i/b. Dave & Co. for applicant (902 of 2006).
Mr.S.S.Pednekar, A.P.P. for State
Mr.M.S.Mohite, for original complainant

CORAM : S.C.DHARMADHIKARI, J.

DATE : 8th December 2006.

P.C.

. These criminal applications for anticipatory bail were pending in this Court for a considerable period. The ad-interim anticipatory bail order dated 10th May 2006 is continuing till date.

2. All these matters were extensively argued by Mr.Mundargi, learned Senior Counsel for applicants, learned A.P.P. and Mr.Mohite for original complainant.

3. Pursuant to a suggestion made by the Court on one occasion, parties agreed to have the matter referred to arbitration for resolving all their disputes, including those in some pending

civil suits. Notices were issued after the said arrangement was recorded.

4. However, later on realising that all parties affected either do not wish to go for arbitration or are not before this Court, applicants so also the original complainant made a statement that the without prejudice offer made during the course of hearing of these applications, for resolving the disputes by arbitration, stands withdrawn. They, therefore, requested the Court to pass appropriate orders on the bail application.

5. Since this Court was informed about the disinclination of parties to go for arbitration only yesterday i.e. on 7th December 2006 but C.Rs. in these cases have been registered as far back as in 2003, I called upon the learned A.P.P. to place on record by way of an additional affidavit the progress made in the investigation

till date and when the prosecution proposes to file charge sheet before the trial court.

6. Mr.Pednekar, learned A.P.P. has filed an additional affidavit of one Dnyandeo Sonaji Geete, Police Inspector, E.O.W. Unit V, Crime Branch, C.I.D. Mumbai which reads thus:-

> 1. I say that I have carefully gone through the petition and on the basis of record, I am filing this short affidavit. I am filing this short affidavit in addition to the affidavit filed earlier on 19th November 2006. I am Investigating Officer in C.R.No.115 of 2003 registered with EOW, Mumbai, hence I am filing this short affidavit on behalf of myself and respondents who are parties of this petition. I say that I am filing this affidavit on the basis of record of EOW Mumbai which I believe to be true.

2. I say that as directed by the Hon'ble High Court (Coram: Shri Justice S.C.Dharmadhikari) on 7th December 2006 I am filing this short affidavit on the issue of filing charge sheet in present case against applicant/accused.

3. I say and submit that in the earlier detailed affidavit strong objection for granting anticipatory bail to the applicant/accused was taken and grounds for custodial interrogation of the applicant/accused were given. In this context I say and submit that charge sheet in this case against the applicant/accused will be filed within four weeks after the arrest of the applicant/accused."

7. Mr.Jha, learned Counsel appearing for one

of the applicants made a serious grievance that the I.O. has not placed on record true and correct facts inasmuch as the applicant Nimish Thakore had approached this Court by way of writ petition for quashing of investigations along with one Dilip Balkrishna Sheth. These writ petitions were heard by the Division Bench of this Court and on these petitions orders have been passed by the Division Bench on 31st August 2006 and 4th October 2006. The orders are passed after recording the statement of this very I.O. that investigations are in progress in two offences viz., C.R.No.85 of 2004 and C.R. No.115 of 2003 and the E.O.W. is investigating both and would complete the same and file a charge sheet. Statement was that within a month's time from the date of the order of the Division Bench i.e. 31st August 2006, investigations would be completed and charge sheet filed. In the further order dated 4th October 2006 on these petitions, a statement was made by learned A.P.P. that the

investigations could not be completed because of the filing of these applications for pre-arrest bail. The grievance of parties before the Court was recorded by the Division Bench and once again the Division Bench observed thus:-

> " We expect the State to take note of this and conclude investigations as expeditiously as possible and preferably within four weeks".

8. Since no charge sheets have been filed in both the C.Rs. I called for the necessary instructions yesterday and the affidavit, far from stating the correct position, does not refer to Division Bench orders and directions. It proceeds on the basis that the investigations would be completed and charge sheets filed without indicating any outer limit in that behalf.

9. It is rather surprising that an affidavit is filed of the present nature in these proceedings. It is further surprising that when the orders directing not to arrest the applicants have been in force from May 2006, I.O. has not bothered despite orders of Division Bench, to apply for appropriate modifications or for vacating the same. That apart, as to how these orders came in the way of investigating the matter and filing the charge sheet is not clear at all. It is well settled that merely because a direction is issued not to arrest the Accused it does not mean that he cannot be summoned for investigation. The I.O. seems to be aware of all this and yet in ignorance of directions of Division Bench has filed an affidavit. These are sorry state of affairs, to say the least. An attempt is made to mislead the Court. Since now a statement is made by learned A.P.P. that the charge sheet would be filed within four weeks from today, I propose to take no further action.

However, Assistant Commissioner of Police, EOW is directed to personally take over investigations in these matters and see that the charge sheet is filed as undertaken before this Court. Needless to state that it would be open for him to take over investigations from the present I.O. and entrust them to some other competent officer or otherwise. It would also be open for the Authorities to take such steps as are permissible in law against the present I.O. for filing an affidavit containing misleading statements so also for not implementing the orders and directions of this Court. The Investigating machinery ought to be aware, once matters are before the Court, that their first and foremost duty is towards the Court. The approach in this matter is not at all satisfactory and I leave at that.

10. Since the orders directing not to arrest the applicants have been in force for quite some

time, interest of justice would be sub-served if they are continued for a further period of four weeks but with the following modifications:-

11. Each of these applicants shall attend from 11th to 15th December 2006 the office of EOW between 11.00 a.m. and 2.00 p.m. They shall deposit their passports with the I.O. They shall not leave Mumbai without prior permission of the trial court. Needless to state that the courts below shall not be influenced by the fact that anticipatory bail has been granted nor by any observations made in the orders of this Court and deal with the applications for bail, strictly on merits and in accordance with law. All concerned to act on authenticated copy of this order.

(S.C.Dharmadhikari, J)